interfere with market forces that will drive service design and technology decisions in the future.

5. Continuing flexibility will be needed to react to what is learned from the process of trying to break down the local exchange monopoly.

LDDS WorldCom has been active in state local competition proceedings for the past two years. If the telecommunications industry has learned anything in that intricate process, it is that there is still much to learn. Local competition has proceeded by fits and starts, by trial and error. It has sometimes gone down blind alleys and run into dead ends.

None of this is to minimize the extraordinary work of pioneering states such as Illinois and New York that have taken the lead in attempting to create local competition. Were it not for them, the nation would be even further from having a plan to break down entrenched local monopoly.

That said, however, the Commission should be modest in what it can accomplish in its initial order this August. The nation and the industry will learn much through the accelerated work to implement the mandates of Sections 251 and 252 that will follow from this order. Any action taken by the Commission here should explicitly recognize that new problems -- and new solutions -- inevitably will develop in the implementation process. The Commission should expressly leave itself the flexibility to revise its rules based on new information in the months to come. We recommend that this docket be kept open after August, so that the

Commission and the parties can propose rule revisions where the initial regulations prove insufficient to promote true competition.

6. When in doubt, err in favor of policies and rules that support competition over monopoly.

The Act rests on a clear presumption in favor of competition over monopoly, and the rules developed here should do the same. As the Notice clearly explains, at this point local service competition does not exist on any material level. 15/ The Commission is not yet in a position to predict how quickly, or in what form, such competition will develop. As it adopts rules here, the Commission should make decisions that rebalance the bargaining power of new entrants to deal with LECs who, as discussed above, have little or no incentive to cooperate. And the Commission should err on the side of rules that are more likely to promote competition. 16/

There is little risk from this conservative approach. If one or more of the rules adopted here prove unnecessary, as demonstrated by the speed and scope with which competition is developing, such rules can always be revised or lifted. In contrast, it will be much more difficult to go back later and increase the level of detail in the Section 251 rules if and when they prove inadequate to create

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15/ See Notice at ¶¶ 6-7, 24-25.

16/ Furthermore, simply as a procedural matter, the Commission may face Section 271 applications from the RBOCs prior to the time that the Section 251/252 rules can be reconsidered and corrected.

competition. And of course, during the interval when inadequate rules are in place, consumers will have been denied the benefits of developing competition.

7. Enforcement procedures for the future are as important as the rules themselves.

Most of the Notice appropriately focuses on the rules that should be adopted as standards for the implementation of Section 251. Those standards are obviously crucial. But of course creating rules is not the same thing as creating competition. We have mentioned the limited incentives of the LECs to comply with the rules, and their bargaining power to read the rules narrowly or subvert their intended effect in practice. Once an agreement is approved, there also must be safeguards in place to allow other carriers access to the terms of those agreements, and to address ILEC breaches. In these circumstances the rules only will be as a good as the enforcement procedures and penalties that support them. The Commission's prolonged and unsatisfactory attempts to implement expanded interconnection policies are "exhibit 1" of the problems that may be ahead of the industry.

Given all that the Commission has before it, enforcement may be one item that can be deferred beyond August. Although Section 251(d) requires the Commission to adopt rules to implement interconnection within six months, that provision does not mandate that the Commission also address all enforcement issues, procedures and penalties as quickly. LDDS WorldCom discusses some enforcement issues below in response to the Notice. However, we suggest that the

Commission open a further rulemaking in the fall to address these matters in more detail. This process would permit enforcement polices to be fully developed when the inevitable implementation breakdowns appear.

8. InterLATA entry must be denied until Sections 251 and 252 are fully implemented because post-entry enforcement actions will be difficult.

The last principle is related to all that has gone before. No matter how clearly and completely the Commission writes the new rules, and how fully the states initially implement them, the fact remains that the main leverage of the Commission to promote competition rests with the keys to RBOC interLATA entry. The Act fully recognizes this fact by making compliance with Sections 251 and 252 one of the most important checklist items. 17/ LDDS WorldCom assumes that the Commission will be appropriately stringent in denying RBOC interLATA applications where interconnection obligations are not satisfied completely and in good faith. To do otherwise would be to upset the delicate balance of the Act, and reward the RBOCs for any intransigence.

Nothing will prevent a willing RBOC from moving quickly to meet its Section 251 and 252 obligations once those obligations are spelled out in full in August. But at the end of the day, the Act will fail if the Commission gives away the carrot of interLATA entry prematurely -- either through inadequate rules, or

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17/ See 47 U.S.C. § 271(c)(2).

through inadequate enforcement of those rules. That is the ultimate principle that should guide implementation of the Act.

II. THE COMMISSION SHOULD ADOPT CLEAR AND DETAILED NATIONAL INTERCONNECTION STANDARDS.

[Notice, Section II.A, ¶¶ 25-36]

LDDS WorldCom strongly agrees that the Commission should take a "pro-active role" to establish detailed national standards for the implementation of Section 251. In our view, the Commission should adopt a clear set of baseline requirements, and then permit these requirements to be expanded by individual states or through the negotiation and arbitration process. **[¶ 25]**

First, broad national rules are contemplated expressly by Section 251(d), which requires the Commission to "complete all actions necessary to establish regulations to implement the requirements of" Section 251. 47 U.S.C. § 251(d)(1). This provision is intended to make clear that the Commission has the lead responsibility in filling in the details to make certain that the new regime established by the Act results in local competition that is both broad and deep.

Second, WorldCom also agrees with the Commission that national rules are crucial to reduce costs and expedite development of local service competition. WorldCom, for example, provides long distance service throughout the country. We necessarily do our network and service planning on a largely national basis. We have been able to grow our business in large part because the same equal

access rules and procedures apply across the country. We can plan our expansion, including our networking and operations activity, based on these common rules. We can implement that expansion at relatively low cost. Similarly, while we have had serious objections to the rate levels for interexchange access, we at least have had predictable and consistent rules to guide our planning. **[¶¶ 28, 30]**

National standards are even more important in the area of local competition. It is difficult enough to establish points of presence to serve each of the nation's LATAs. The problem is multiplied many times over when one considers the literally thousands of necessary interconnection points for coast-to-coast local service. We must have consistency and certainty in order to engage in the massive planning, investment and implementation activity that the new Act requires of us. As noted above, by creating the foundation for a one-stop shopping market, the Act forces firms like WorldCom to enter the local market to defend our customer base, to allow all consumers to enjoy the benefits of competition. To do so, we must face a consistent baseline of standards across the country.

Third, we also agree that clear national standards are necessary in order for the negotiation and arbitration process of Section 252 to work correctly. The rules will be the only source of leverage we have at the bargaining table, for ILECs have no incentive to interpret the Act in ways that advance competition. The more uncertainty that exists regarding the requirements of Sections 251 and 252, the more likely it is that the negotiation processes will fail. Similarly, the

state arbitration process cannot work if arbitrators do not have a core set of standards to guide them. More generally, failure to adopt clear rules now will only mean more unnecessary disputes and litigation later, with less competition for consumers in the meantime. **[¶¶ 31-32]**

WorldCom appreciates the difficulty that the Commission may face in identifying all the rules necessary for local competition in the short time available here. Going back to the themes noted above, we know that the Section 251 implementation process itself will reveal new problems and issues, as well as better solutions. That is why we have recommended that the Commission keep this docket open so that the initial rules can be updated.

III. THE ACT ESTABLISHES A NEW JURISDICTIONAL FRAMEWORK FOR INTER-CARRIER ARRANGEMENTS.

[Notice, Section II.A., ¶¶ 37-41]

LDDS WorldCom agrees with the Notice's tentative conclusion that the Act fundamentally alters the jurisdictional treatment of inter-carrier arrangements. First of all, the Act itself does not refer to conventional jurisdictional separations or otherwise demonstrate that such distinctions remain relevant. Sections 251 and 252, as well as the new definitions in the Act, refer generally to "telecommunications services" and "carriers" without jurisdictional distinctions. 18/ This plain language is consistent with the Act's clear goal to create a national policy

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18/ See, e.g., 47 U.S.C. § 153(a)(49) and (a)(51).

based on competition across all services -- those now labeled local and long distance, those both interstate and intrastate.

Second, the Act's structure is consistent with the fact that the same ILEC and other networks are used by carriers to provide both interstate and intrastate services. Technical and cost considerations do not differ. By applying a consistent set of rules to interconnection, the Act avoids directly or indirectly favoring one set of uses over another. The Act also reduces the ability of an ILEC to engage in discrimination and cross-subsidization, actions that are prohibited throughout the statute. 19/

WorldCom also agrees with the Commission's conclusions regarding how the Act divides jurisdiction for inter-carrier arrangements. The statute is very clear that the Commission has lead responsibility to establish interconnection policies and rules, and the states have lead responsibility for applying those rules through their oversight of the negotiation and arbitration processes. This division gives significant roles to both the federal and state jurisdictions. It assures that a national policy in favor of competition will go forward. But it puts implementation of that policy at the state level, where ILEC costs and other considerations can be examined on a faster and more complete basis. [¶ 38]

The Commission is correct that this interpretation of Section 251 is consistent with Section 2(b) of the 1934 Act. States continue to have ongoing

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19/ See, e.g., id. at § 251(c).

authority over local and intrastate services provided to end users (so long as they do not use that authority to indirectly block competition itself). The FCC has continuing authority over interstate and international end user services. The focus of the 1996 Act is on inter-carrier arrangements to create the networks over which these end user services can be offered. It is in this area that the Act draws new jurisdictional lines. **[¶¶ 39-40]**

Finally, the Commission clearly has continuing jurisdiction to enforce the requirements of Sections 251 and 252. First, nothing in the Act takes these provisions outside the general scope of Section 208, which reaches acts by "any common carrier subject to this Act, in contravention of the provisions thereof." 20/ If a requesting carrier is aggrieved by another carrier's refusal to interconnect, a Section 208 complaint is one of its available options. Similarly, an aggrieved carrier remains free to bring a private right of action under Sections 206-209 of the Act. **[¶ 41]**

These conclusions are fully consistent with the additional remedies in other forums provided by the Act. The flexibility of the Communications Act in the area of remedies has been a strength over the years, allowing parties to select an appropriate forum based on the nature of the dispute. These conclusions also are consistent with the special provisions in Section 252 governing review of state commission actions concerning formation of interconnection agreements. In all

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20/ 47 U.S.C. § 208(a).

other circumstances involving interconnection (or refusal to interconnect), traditional enforcement options continue in place at the federal level.

Indeed, it is crucial that the Commission do nothing to weaken the available enforcement tools and remedies provided by the Communications Act, as amended by the 1996 Act. As WorldCom had discussed above, promulgation of interconnection rules by itself is of little value given the overwhelmingly unequal bargaining power of the ILECs, and their lack of incentives to cooperate in the implementation process. Aside from the singular "carrot" of interLATA entry for the RBOCs -- a one-time incentive -- the ILECs have no reason to cooperate in the interconnection process. It follows that the Commission must preserve many big "sticks" to keep the ILECs in compliance with the new Act and the rules promulgated here.

IV. SECTION 251(C)(3) REQUIRES COMPREHENSIVE NETWORK UNBUNDLING.

[Notice, Section II.B.2.c.]

A. ILEC Network Elements Are Necessary Facilities For New Competitors

LDDS WorldCom strongly supports the Commission's emphasis on the importance of ILEC network unbundling to the development of local competition. We agree that Section 251(c)(3) is in many respects the cornerstone of the 1996 Act. Over the past year we have been active in state proceedings, asking state commissions to recognize that widespread competition depends upon new carriers

having cost-based access to the ILEC network platform elements. As a long distance company with a nation-wide, geographically-dispersed, customer base, it has become clear to us that we will have no opportunity to compete with the RBOCs unless we can provide local service easily and efficiently using the preexisting ILEC network. We have argued for the right to purchase that network at its economic cost (thereby ensuring that the ILEC's costs are covered with a profit), and then use the ILEC network platform to provide our own services to end users (and to other carriers who require access to our end user customer base). We have explained that local competition means competition for all of the ILEC revenue streams, including local exchange, vertical features, and access. 21/

Section 251(c)(3) of the Act now makes this entry path available across the nation. It expressly gives new entrants the ability to access the features, functions and capabilities of the ILEC network, to do so on an unbundled basis, and to combine and configure those elements freely. As the Commission recognizes, this capability will enable new entrants to "purchase access to those elements incumbent LECs can provide most efficiently, and at the same time build their own facilities only where it would be efficient." 22/

21/ See, e.g., Surrebuttal Testimony of Joseph Gillan, LDDS Ex. 3.0, ICC Docket Nos. 95-0458/0531 (Consolidated), filed January 19, 1996, at 12 (noting "the essential contradiction of Ameritech's opposition to the platform-based provider offering both exchange and exchange access services. Ameritech acknowledges that the facilities are used in two markets, but insists that its competitors be permitted to compete in only one").

22/ Notice at para. 75. See also Notice at para. 12.

It is difficult to overemphasize the importance of this provision to competition and consumers. The Act correctly recognizes that new competitors cannot -- and as a matter of efficiency should not -- be required to overbuild the LEC monopoly network to compete. The Act therefore treats the ILEC network elements as facilities that must be made available to other providers at cost and on a non-discriminatory basis. Importantly, the Act makes these elements available to any "requesting carrier" without restriction. CAPs can use them to complete service to their narrowly-targeted customer bases. IXCs can use them to provide local services broadly across the country. LECs can use them to compete against each other across traditional franchise boundaries. 23/ Thus, all ILEC competitors have an equal ability to use Section 251(c)(3) to compete with the ILECs based on relevant market factors rather than outdated regulatory distinctions.

It follows that the success or failure of the Act will turn heavily on how the Commission and the states implement Section 251(c)(3). If ILECs are required to meet their full obligations under the statute, then local service competition may begin to blossom. Alternatively, however, if the ILECs are able to subvert the intent of the statute, and deny potential competitors access to their local network at their cost structure, then competition will be stunted from the start. A few niche competitors may arise, perhaps with the blessings of ILECs who for political

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23/ We use these references to CAPs, IXCs and LECs advisedly, for in the future these labels will lose their meaning. The 1996 Act erodes conventional lines between these markets and creates full-service carriers.

reasons need to identify some alternative carrier. But full bore competition will not be available to most consumers.

1. The Need For National Baselines.

First of all, LDDS WorldCom strongly supports the Commission's proposal to adopt a set of baseline network unbundling requirements that would apply to every ILEC in every state. 24/ This list would be mandatory for purposes of Section 251. The competitive checklist of Section 271 could not be met, moreover, until each element is fully implemented and automated operational systems are in place and functioning for each. Post-entry fixes to the implementation process will be far more difficult, and far less effective, than making sure that the unbundling requirements have been carried out properly in the first place. [¶¶ 77]

Strong national baseline unbundling requirements are crucial to permit planning and implementation to proceed rapidly, as discussed in Section II.A above. LDDS WorldCom's state experience convinces us that promulgation of core unbundling principles, and a baseline set of rate elements, will jump start the local competition process.

Equally important, national standards will minimize opportunities for inconsistent results that could introduce uncertainty and delay. For example,

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24/ LDDS WorldCom recognizes that the Act allows states to excuse smaller ILECs from the Section 251 requirements in certain circumstances. However, the rules adopted here should be of general applicability, subject to such state action in appropriate cases.

states must begin to arbitrate interconnection agreements, and determine what is required by the Act, as early as mid-summer. The FCC's uniform guidelines will speed that process and yield a pro-competitive baseline set of unbundled offerings under the Act.

Third, national standards will provide a consistent set of standards for evaluation of RBOC entry applications under Section 271. The Act conditions entry on an RBOC meeting the Act's unbundling requirements at cost-based rates, and with nondiscriminatory operational support systems in place and proven workable. National standards for this purpose will provide clear guidance to all interested parties.

2. Flexibility to Exceed and Revise the Baseline

The FCC should make it clear that any set of unbundling guidelines would operate only as minimums, with state commissions, private parties in negotiations, and the FCC itself free to add additional elements or to develop the concept or content of the elements further. We therefore strongly support the FCC's tentative conclusion that state commissions are free to require additional unbundling. [¶ 78]

The FCC should be prepared, however, to establish further uniform requirements or more detailed rules itself. As experience develops, inevitably changes will be necessary to ensure that competitors have access, as a practical as well as theoretical matter, to unbundled network elements. As LDDS WorldCom

emphasized above, the Section 251 implementation process will provide the first real experience with use of the ILEC network elements by others. The Commission must make clear that it can and will continue to review its list of unbundled network elements, and modify that list over time in response to petitions by carriers or on its own motion. Modifications will be necessary, for example, in response to changes in technology, ILEC networks, or in services provided over ILEC facilities. The experience of new entrants in purchasing and using unbundled elements, and a state commission's experience in implementing unbundling requirements, undoubtedly also will lead to modifications.

3. Network Elements Defined

As the Notice indicates, the Act establishes a broad definition of "network elements." LDDS WorldCom agrees with the Commission's tentative conclusion that network elements can themselves be broken down into sub-elements, and that requesting carriers should be able to purchase either or both. The Act defines network elements flexibly precisely because Congress did not want to prejudge the level of disaggregation that would be most useful to competitors. The goal of the Act is to allow competitors access to the ILEC local exchange facilities platform, in whole or in part, depending on the needs of the carrier at any given time. The Commission should take no actions here that would restrict this flexibility. [¶ 83]

Similarly, the Commission should resist any linkage between network elements and the services that a ILEC itself may offer using those elements. The Act is very clear that a requesting carrier can provide any telecommunications services its customers want using the network elements it acquires from the ILEC. Nothing in the Act requires the requesting carrier to offer particular services: nothing in the Act denies the carrier the right to provide a service. As the Commission itself recognized, unbundled network elements are facilities without jurisdictional character. 25/ They may be used to provide a wide range of services, from basic local exchange service (as traditionally defined) to intrastate and interstate interexchange service, to information services. The Act obligates ILECs to provide access to these network elements for any "telecommunications service." Thus, it would violate the plain meaning of the Act for an ILEC or for a regulator to impose restrictions on the services for which an element is used. **[¶ 84]** Market forces, not regulation, should determine how an entity uses the network elements.

4. Relationship to Section 251(c)(4)

The Commission should make clear that a carrier's use of unbundled LEC network elements to create its own services is fundamentally different from the resale of the LEC's own retail services pursuant to Section 251(c)(4). These distinctions explain why the two options are subject to very different pricing rules under the Act. **[¶ 85]**

25/ Notice at ¶ 37.

Congress created service resale and network unbundling as equally important, complementary options for local entry. Under Section 251(c)(3), competing carriers may employ unbundled ILEC network elements to design and provide their own services in competition with the ILEC, one of which may be their own end user local exchange service. In contrast, Section 251(c)(4) simply allows competing carriers to resell the ILEC's particular retail end user services. 26/

Both the network unbundling and service resale options are essential if consumers are to have real choices for providers of full service packages, which likely will include both local and long distance in the future. Resale of existing ILEC retail offerings can permit immediate entry by competitors, and may be a useful option for many companies. Indeed, many carriers are likely to use a combination of ILEC network elements, ILEC wholesale end user services, and their own facilities to provision their networking requirements.

That said, we emphasize that service resale is entirely different from the lease of unbundled network elements -- including the purchase of unbundled local switching and other elements in combination. First, resale differs from unbundling because resale does not allow competing carriers to provide as extensive and creative an array of services. Again, unbundled elements do not have a jurisdictional character. 27/ Telecommunications carriers purchasing those

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26/ 47 U.S.C. § 251(c)(4) (1996).

27/ Notice at ¶ 37.

elements may use them to develop local exchange services offered to end users (including vertical services and other ancillary services). However, they also will use the same network elements to terminate local and interexchange traffic directed to their end user customers by other carriers, and to originate interexchange traffic of the end user that they handle themselves or pass off to another carrier. Thus, requesting carriers using unbundled elements may offer the full range of services the ILEC provides, including exchange access. 28/ Put simply, they share the ILEC's cost structure through the rates they pay for elements, and they share the opportunity to compete with the ILEC for all revenue streams against which those costs are recovered.

In contrast, wholesale offerings are defined solely in terms of the ILEC's own retail offerings. A reseller would be limited to reoffering distinct ILEC retail offerings -- local exchange services, intraLATA toll, and vertical services. If the reseller also offers toll service, it would have to purchase exchange access from the ILEC separately. As discussed further in Section VII below, this limitation sharply reduces the value of service resale, particularly if access rates remain far above cost.

28/ Notice at ¶¶ 104-106, 165 (unbundled elements may be used for transport and to self-provision access).

Second, ILEC competitors could not use those wholesale offerings to develop their own innovative service options and pricing plans. 29/ The ability to develop new and different offerings in competition with the incumbent has been a driver of innovation and competition in the long distance market, and could have the same result in the local/full service market. Section 251(c)(3) creates a means by which new entrants can experiment with service design, pricing, calling area scope, and so on while facing the same network costs as the ILEC. This competitive pressure should spur the ILECs in turn to innovate in the design and pricing of its own local exchange service.

Such flexibility is crucial to competition. The ILECs already are beginning to reshape their product lines and offer more options to prepare for competition. The Commission is familiar with efforts by ILECs in recent years to implement "extended area service" local calling options designed to reduce opportunities for IXCs to compete in the intraLATA market. More recently ILECs also are redesigning their local service options in other ways. BellSouth, for

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29/ For example, a competitor may conclude that it could attract new customers who would be willing to buy custom calling options if they were priced closer to their incremental cost, and would be willing, as part of that package, to pay for local service on the basis of usage rather than on a flat-rated basis. If the competitor is paying the full cost of the network, by buying unbundled network elements combined as a platform, the competitor would then have the freedom to price custom calling services low (because the competitor is paying the ILEC the true cost of providing those services), and to collect revenues from basic services in a different manner (again because the competitor is paying the true cost of the network).

example, has introduced a new service in Jackson, Mississippi, in which it offers a combination of retail offerings at a low rate. 30/ Section 251(c)(3) creates an ability for new ILEC rivals to purchase elements and design their own retail offerings, competing to beat the LEC to market with the most attractive products. In this case, for example, a new carrier might have beaten BellSouth to market, or designed a better plan. In contrast, Section 251(c)(4) simply allows the requesting carrier to resell the ILEC's retail offerings if and when the ILEC chooses to bring them to market.

For example, in addition to experimenting with pricing and service design, ILEC competitors could use unbundled elements (but not resale) to bring to market such innovations as:

- Defining alternative local calling areas based on cost and access to switch routing capabilities. With resale, the competing carrier is tied to the existing ILEC local calling area and structure.
- Offering retail services deriving from switch functionalities not currently used by the incumbent or from the use of AIN triggers in the ILEC switch in conjunction with the competitor's databases.
- Routing operator traffic to the competitor's own (or contracted) operator center in order to "brand" the service with its own name. Many ILECs, when discussing resale, have indicated that they would not be able to provide "branded" operator service for other carriers.

30/ BellSouth, for example, has introduced a new service package in Mississippi in which it offers a $26 per month plan that includes local service and virtually all optional features such as Call Waiting, Caller ID, and Call Return. Previously, if you purchased all 18 options separately, it would total about $70 per month. The program is or will soon be available throughout Bell South's nine-state area." See The Jackson Clarion Ledger, May 1, 1996.

- Offering project account codes for intraLATA or local measured calling. This same logic could be used to provide enhanced conference calling features and capabilities, as well as voice mail/voice messaging.

Third, the *process* of provisioning service using unbundled elements is wholly different from that used to resell the incumbent's retail services. As Carl Giesy testified for MCI in a Pennsylvania unbundling case recently:

> Under resale . . . of the incumbent ILEC's retail services . . . really all that [reseller is doing] is rebilling, with some other modifications. . . . But it's quite different, quite more complex . . . to build up a local service or build up a provisioning local service from the piece parts. You have to make sure you have sufficient quantity of switching. You have to make sure your customers have access to 911. You have to make sure your customers have DA and operator services. You have to make sure you have the unbundled loops necessary . . . There's a whole technological and engineering process that goes into that. 31/

Carriers purchasing unbundled elements in combination also must define and price the retail service offerings. The point is that the activity of reselling ILEC retail services and buying ILEC network is entirely different.

As the Notice recognizes, the fundamental difference between purchase of unbundled network elements and resale of retail services is reflected in the two distinct pricing standards applicable to these options. When a carrier purchases unbundled network elements under Section 251(c)(3), it is purchasing

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31/ Tr. at 611-12 (MCI Witness Giesy) (April 11, 1996) in Application of MFS Intelenet of Pennsylvania et al., Docket Nos. A-310203F0002 et al.

the right to use the ILEC facility, and pays the ILEC the cost of using that network facility. See 47 U.S.C. § 252(d)(1). In contrast, when a carrier purchases ILEC retail services for resale under Section 251(c)(4), it pays a wholesale rate that is calculated without regard to the cost of providing the service. Rather, the price is set to equal the retail rate less retail-related costs not incurred by the ILEC when it sells to another carrier. 47 U.S.C. § 252(d)(3). This pricing difference reflects the essential difference in the products being provided under Sections 251(c)(3) and (c)(4): network facilities versus retail services.

B. Requesting Carriers Should Have Access to Network Elements on an Unrestricted Basis.

1. Unbundling Wherever Technically Feasible.

LDDS WorldCom agrees with the Commission that requesting carriers should be able to buy both network elements and the functionality of a network element, at the carrier's option. The Act's only constraint is that such unbundling occur at a "technically feasible point." LDDS WorldCom endorses the FCC's tentative conclusion that the burden must be placed on the ILEC to show that unbundling is technically infeasible. The fact that another ILEC has made the requested network element available -- whether through arbitration, voluntary negotiation, or otherwise -- also should be prima facie evidence that it is technically feasible to unbundle that element. **[¶ 87]**

The Commission should in particular place a high burden on any ILEC who tries to deny an unbundling request based on a claim that the element is proprietary, or that unbundling would harm the network. The ILECs should not be allowed to use these excuses to subvert the basic intent of the statute to establish local competition for all consumers. [¶ 88]

More generally, the obligation to unbundle should be explicitly defined as request-driven, that is, if a requesting carrier asks for an element, it should be able to get it. Section 251(d)(2) requires the Commission to consider, even in the case of elements deemed to be proprietary, whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." The touchstone for Commission and state consideration of the network unbundling requirement thus is the need of the carriers seeking unbundling. The definition of unbundled network element is broad and unqualified. 32/ Thus, if a competitor identifies an unbundled network element that it needs, the ILEC should provide it. [¶ 88]

It also is crucial for the FCC to make it clear that, as required by Section 252(i), any unbundled element that arises from a negotiated or arbitrated agreement must be made available to any other carrier, regardless of whether that carrier is otherwise similarly situated with the party to the agreement. This

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32/ 47 U.S.C. 153(a)(45) (1996).

statutory requirement underscores the principle that all ILEC competitors must be treated equally. **[¶¶ 269-72]**

2. No Discrimination in Terms, Conditions and Operational Support.

LDDS WorldCom strongly agrees that minimum national standards are necessary regarding the terms and conditions under which the ILECs make network elements available. Unbundling by itself means nothing if the unbundled elements are not available to requesting carriers on the same basis as the ILEC uses them to provide its own services. **[¶¶ 89, 91]**

First, LDDS WorldCom supports the FCC's proposal that it "require ILECs to make it as easy to switch local service providers as it is for customers to switch interexchange carriers." Notice at ¶ 91. If customers cannot switch local service providers with the same ease that they switch long distance companies today, it is plain that the ILECs, which currently serve 100 percent of the customer base, will be able to offer full service packages on terms that no competitor can beat, at least not in the short run. 33/

Second, the FCC should adopt its proposal to require incumbent ILECs to "provide network elements using the appropriate installation, service, and

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33/ As LDDS WorldCom discusses elsewhere in these comments, the Act's Section 251 and 271 standards cannot be met if entry to the local market, and provision of competitive local service to customers, remains more difficult than RBOC entry to the interLATA market. See, e.g., Section I.C., infra.

maintenance intervals that apply to ILEC customers and services." Notice at para. 89. Discrimination in these areas must be strictly prohibited. The ILECs should be required to provision and maintain elements used by their competitors on the same terms and conditions that govern their internal activities when they provision their own customers. ILECs should, in addition, be required to comply with any applicable national or industry-based standards for ordering, installation, service repair, and maintenance. Id.

Third, in addition to this general principle, the Commission also should adopt more explicit service benchmarks and minimum requirements for basic provisioning and maintenance activities to ensure that new entrants are receiving ready, high quality access to network elements, especially during the initial interconnection implementation period. As the Commission has recognized, such uniform technical and operational requirements could greatly reduce the resources that a carrier like LDDS WorldCom otherwise would have to devote in every state -- for every incumbent ILEC -- in order to provide service on a smooth, interoperable basis to our national customer base. **[¶ 79]**

3. No Restrictions on Combination of Elements.

One of the most important aspects of Section 251(c)(3) is the right it gives requesting carriers to combine network elements. More specifically, Section 251(c)(3) gives "any requesting telecommunications carrier" the right to obtain unbundled network elements and requires incumbent ILECs to "provide such